

**IN THE UNITED STATES DISTRICT COURT
FOR THE DISTRICT OF MONTANA
BILLINGS DIVISION**

EDWARD H. BLOME,

Plaintiff,

vs.

**JOHNSON, RODENBURG &
LAUINGER, and CHARLES DENDY.**

Defendants.

CV-07-45-BLG-RFC

**ORDER ADOPTING FINDINGS
AND RECOMMENDATIONS OF
U.S. MAGISTRATE JUDGE**

FILED
BILLINGS DIV.

2007 DEC 11 AM 10 17

PATRICK E. DUFFY, CLERK

DEPUTY CLERK

On October 24, 2007, United States Magistrate Judge Carolyn S. Ostby entered Findings and Recommendation with regard to the cross motions for summary judgment filed in this case. Magistrate Judge Ostby recommends Defendants' Motion for Summary Judgment (*Doc 28*) be granted and Plaintiff's Motion for Summary Judgment (*Doc. 9*) be denied.

Upon service of a magistrate judge's findings and recommendation, a party has 10 days to file written objections. 28 U.S.C. § 636(b)(1). In this matter, Plaintiff objections on October 31, 2007. *Doc. 41*. Plaintiff's objections require this Court to make a *de novo* determination of those portions of the Findings and Recommendations to which objection is made. 28 U.S.C. § 635(b)(1). After such a review, the Court concludes Plaintiff's objections are not well taken and adopts Magistrate Judge Ostby's Findings and Recommendation in their entirety.

Plaintiff's first objection is that Magistrate Ostby invaded the province of the jury in determining that Defendants provided Plaintiff with proper notice as required by the Fair Debt Collection Practices Act (FDCPA). In concluding as a matter of law that Defendants complied with the FDCPA's notice provisions, Magistrate Ostby's relied on the November 26, 2006


Dunning letter which Defendants sent to Plaintiff as required by the FDCPA. Plaintiff attached this letter as Exhibit 1 to the Complaint. A review of this letter reveals Magistrate Judge Ostby correctly concluded that it met the requirements of the FDCPA's notice provisions.

Plaintiff's second objection is more correctly characterized as a baseless accusation. Plaintiff accuses Magistrate Judge Ostby of conspiring with Defendants in violation of 18 U.S.C. § 241 (criminal conspiracy against rights). Specifically, Plaintiff claims the Magistrate "acted to abuse the plaintiff in the free exercise of Constitutionally Reserved Rights by providing assistance of counsel to the business associate defendants in attempting to effect a frivolous demurrer prohibited at F.R.Civ. P. 7(c)." Although there is no Fed.R.Civ.P. 7(c) in the current version of the Federal Rules of Civil Procedure effective December 1, 2007, the prior Rule 7(c) provided that "demurrers, pleas and exceptions for insufficiency of pleadings shall not be used." In any event, Defendants filed a Rule 56 motion for summary judgment—not a demurrer. More importantly, the Court has already concluded that Defendant's motion had merit and was properly granted.

For those reasons, **IT IS HEREBY ORDERED** that Plaintiff's Motion for Summary Judgment (*Doc. 9*) is **DENIED**. **IT IS FURTHER ORDERED** that Defendants' Motion for Summary Judgment is **GRANTED**.

The Clerk of Court shall notify the parties of the making of this Order and close this case accordingly.

DATED this 11 day of December, 2007.


RICHARD F. CEBULL
UNITED STATES DISTRICT JUDGE